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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,171	01/04/2006	Alberto Manservigi	20022/41353	9280
4743	7590	02/20/2009	EXAMINER	
MARSHALL, GERSTEIN & BORUN LLP			LEE, DANIEL H.	
233 SOUTH WACKER DRIVE				
6300 SEARS TOWER			ART UNIT	PAPER NUMBER
CHICAGO, IL 60606-6357			4122	
			MAIL DATE	DELIVERY MODE
			02/20/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/539,171	MANSERVI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	DANIEL LEE	4122	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-10 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 15 June 2005 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____ .                                     |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20060206</u> .  | 6) <input type="checkbox"/> Other: ____ .                         |

## DETAILED ACTION

### ***Specification***

1. The disclosure is objected to because of the following informalities: The sentence on page 1, lines 19-20 is not a complete sentence. On line 3 of page 5, "input hopper 3" should be "input hopper 2". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. **Claims 1-10 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

5. Regarding claims 1-10, the claims make no mention of a product change on a cigarette manufacturing machine that is made substantially without stopping the machine, which was stated to be the main advantage of the invention and the contribution over the prior art. The claimed limitations, as interpreted by the examiner, fail to address the drawback disclosed by Applicant in lines 21-28 of page 1 of the instant application. The processing of the first and second types of tobacco, as claimed,

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read on any cigarette manufacturing machine that processes more than one type of tobacco.

**6. Claims 1-10 rejected under 35 U.S.C. 103(a) as being unpatentable over Gamberini (US 3059650) in view of Applicant's admission.**

7. Regarding claim 1, Gamberini teaches a cigarette manufacturing machine, wherein an input hopper (col. 2, line 30; hopper 1) receives a first type of shredded tobacco from a supply header (col. 2, line 31; tobacco deposited in this hopper), and feeds it to at least one channel for forming a bead of tobacco (col. 2, line 34; layer of tobacco), which is released onto a paper strip (col. 3, line 37; paper web) traveling along a forming table (col. 3, lines 12-13; conveyor carpet) for forming a continuous cigarette rod (col. 3, line 32; rod forming mechanism). Gamberini does not expressly disclose the method comprising the steps of cutting off supply of said first type of tobacco to said manufacturing machine to form a waste stream of shredded tobacco of the first type; and feeding a second type of shredded tobacco through the supply header and the input hopper until the manufacturing machine is completely full. However, page 1, lines 15-17 of the instant application states that "product changes are normally made by stopping the machine and clearing the various compartments of the machine." Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention, since product changes are *normally* made by stopping the machine, to cut off supply of the first type of shredded tobacco before feeding a second type of shredded tobacco through the supply header.

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8. Regarding claim 2, Gamberini does not expressly teach unloading the first type of tobacco comprises the step of arresting the said paper strip. However, Gamberini, in col. 3, lines 37-39, states, "the paper web is continuously drawn off from a reel in a manner well known in the art." Since it is well known to draw paper off a reel when tobacco is discharged, it would have been obvious to one of ordinary skill in the art to arrest the paper strip when the tobacco is no longer discharged.

9. Regarding claim 3, Gamberini does not expressly teach starting up supply of the paper strip when the manufacturing machine is filled completely with said second type of shredded tobacco. However, as discussed above, it would have been obvious to start up the supply of the paper strip only when tobacco is discharged, whether it was of the first type, the second type, or of any type. If the intent is to produce a tobacco product, it would be obvious to combine or synchronize both operations to maximize resources and the operation.

10. Regarding claims 4 and 5, Gamberini teaches the first type of tobacco is unloaded by deflecting (col. 3, line 19; deflector) said bead of tobacco into container means (col. 3, lines 13-14; discharge them into a collecting bin) at the output end of the forming table (see Fig. 1; 17).

11. Regarding claim 6, Gamberini does not expressly teach the manufacturing machine is filled completely with shredded tobacco in successive loads; each load being formed inside the header separated from the input hopper, and being unloaded into the hopper by connecting the head to the input hopper. However, it is well known in the art that hoppers and supply headers are meant to be filled with tobacco so that tobacco

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may be withdrawn from them (col. 2, line 31; tobacco deposited in this hopper is withdrawn). Therefore, it would be expected that one would fill the hopper by connecting it to a supply header.

12. Regarding claim 7, Gamberini teaches the manufacturing machine is filled completely with shredded tobacco by forming a bead (col. 2, line 34; layer of tobacco) of tobacco along the forming table (col. 3, lines 12-13; conveyor carpet).

13. Regarding claim 8, Gamberini does not expressly disclose that tobacco is left without the relative paper strip until a given desired compactness is achieved.

Gamberini teaches that tobacco is deposited on top of the paper tape (col. 3, line 40). It would have been obvious to one of ordinary skill in the art to deposit the tobacco on top of the paper only when the desired compactness is achieved.

14. Regarding claim 9, Gamberini teaches the bead of tobacco, without the paper strip, is deflected into container means (col. 3, lines 14-15; discharge them into a collecting bin).

15. Regarding claim 10, Gamberini teaches a method wherein said paper strip is fed (col. 3, line 37; paper web), with the bead of tobacco, along the forming table to form a new type of continuous cigarette rod (col. 3, line 32; rod forming mechanism), an initial portion of the new type of continuous cigarette rod being deflected into the container means (col. 3, line 14; collecting bin).

***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LEE whose telephone number is (571)270-7711. The examiner can normally be reached on Monday-Thursday, 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571)272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. L./  
Examiner, Art Unit 4122

/Milton I. Cano/  
Supervisory Patent Examiner, Art Unit 4122